21130 SERVICE DATE - DECEMBER 13, 1996
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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33122

NORTHWESTERN STAGE LINES, INC., AND GREYHOUND LINES, INC.--PURCHASE (PORTION) EXEMPTION

Decided: December 10, 1996

Petitioners, Northwestern Stage Lines, Inc. (NWL), and Greyhound Lines, Inc. (GLI), seek to be exempted under 49 U.S.C. 13541, from the prior approval requirements of 49 U.S.C. 14303(a)(2),[1] for each to acquire from the other certain operating rights between points within the State of Washington, in interstate, intrastate, and foreign commerce. NWL seeks to acquire GLI's local bus routes between Moses Lake and Everett, via Wenatchee, and between Wenatchee and Ellensburg; and GLI seeks to acquire NWL's Interstate Highway 90 express route between Moses Lake and Seattle.

The petition for exemption was filed on September 12, 1996, and notice was served[2] and published in the Federal Register on October 11, 1996 (61 FR 53486-53487). No comments opposing the exemption have been filed. Based on our review of the record, we are exempting the proposed transaction from regulation.[3]

BACKGROUND

NWL (MC-108099), a motor passenger carrier, operates regular-route services in Washington and Idaho.[4] GLI (MC-1515), a motor passenger carrier, operates nationwide, regular-route services.[5] NWL operates an express route over Interstate Highway 90 between Seattle and Spokane, via Moses Lake. It proposes to transfer to GLI the operating rights for the approximately 175-

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[1] The language of 49 U.S.C. 14303(a)(2) is identical to former 49 U.S.C. 11343(a)(2), under which applications of this nature were routinely considered. Because we have no authority to transfer actual operating rights (either interstate or intrastate), petitioner will have to take whatever steps are necessary, after this decision becomes effective, to arrange for their transfer under applicable state law and the regulations of the Federal Highway Administration.

[2] A copy of the notice was also served on the Department of Justice, Antitrust Division.

[3] An exemption of this transaction from regulation exempts petitioners from the antitrust laws and other pertinent state and municipal laws. See 49 U.S.C. 14303(f).

[4] NWL is affiliated with Boise-Winnemucca Trailways, another motor passenger carrier.

[5] Greyhound is affiliated with the following motor passenger carriers: Continental Panhandle Lines, Inc.; Texas, New Mexico & Oklahoma Coaches, Inc.; and Vermont Transit Co., Inc.

mile portion of the express route between Moses Lake and Seattle. In return, GLI proposes to transfer to NWL the operating rights for its local routes: (1) between Moses Lake and Everett, via Wenatchee, a distance of about 175 miles over Washington Highways 171, 17, 282, and 28 and U.S. Highway 2;[6] and (2) between Wenatchee and Ellensburg, a distance of about 69 miles over U.S. Highway 97.

Upon consummating the transaction, each carrier will operate routes formerly operated by the other. Because GLI already operates between Seattle and Spokane over Interstate Highway 90, under its own operating rights, the transaction essentially will convert NWL's operations from entirely express service between Seattle and Spokane, via Moses Lake, to a combination of express service over Interstate Highway 90 for the portion of the route between Spokane and Moses Lake and local service for the portion of the route between Moses Lake and Seattle, via Wenatchee and Everett.

NWL will use GLI's bus terminal in Wenatchee and will become a tenant in GLI's bus terminals in Ellensburg, Everett, and Seattle. In addition, GLI will terminate its agency agreement in Ephrata, WA, and NWL will consummate an agency agreement with the same agent. Neither petitioner is assuming any obligation to the other's employees.

Petitioners assert that the proposed transaction is intended to make their respective operations more efficient and economical and that the traveling and shipping public will benefit as a consequence. The transaction, they assert, will enable them to perform the services they are best suited to offer. As a limited, regional bus line, NWL allegedly operates more effectively serving small communities along rural routes, and as a large, nationwide regular route carrier, GLI allegedly operates more effectively serving major metropolitan centers along interstate highways.

According to petitioners, the affected region is sparsely populated, and the distances within the region are sufficiently close and the highways proximately located to make car travel easy between the region's communities. Insofar as package express traffic is concerned, petitioners assert that the competition from United Parcel Service and Federal Express is ample and pervasive. Petitioners state that the proposed transaction is in the public interest because it will enable them to provide more efficient and economical service to passengers and package express shippers without a reduction in service or loss of competition.

Petitioners assert that GLI's annual gross operating revenue alone exceeds the $2 million jurisdictional threshold of 49 U.S.C 14303(g); that the proposed transaction will have no effect on the quality of the human environment or the conservation of energy resources; that both NWL and GLI hold satisfactory safety fitness ratings and have adequate insurance coverage to protect the public; and that neither NWL nor GLI is domiciled in Mexico or controlled by persons of that country.

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[6] NWL holds operating rights between Everett and Seattle over Interstate Highway 5.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(a)(2), a motor passenger carrier may not purchase, lease, or contract to operate the property of another motor passenger carrier without our prior approval. However, under 49 U.S.C. 13541(a), we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not needed to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) the exemption is in the public interest.

Transportation Policy. Detailed scrutiny of this transaction under 49 U.S.C. 14303 is not necessary to ensure the development, coordination, and preservation of a sound transportation system consistent with those aspects of the transportation policy contained in 49 U.S.C. 13101(a)(1). By allowing petitioners to realign their operations so as to permit them to provide the services they are best suited to offer, an exemption will recognize and preserve the inherent advantages of intercity bus service, promote efficiency in the motor carrier transportation system, and encourage sound economic conditions among carriers [49 U.S.C. 13101(a)(1)(A), (B), and (C)].

Similarly, detailed scrutiny under 49 U.S.C. 14303 is not necessary to promote competitive and efficient transportation services consistent with those aspects of the transportation policy contained in 49 U.S.C. 13101(a)(2). By allowing petitioners to conduct the operations best suited to their abilities and adapt their schedules better to meet the needs of passengers and shippers, an exemption will promote efficiency in motor carrier transportation; meet the needs of passengers; allow for the most productive use of equipment and energy resources; and provide and maintain service to small communities, small shippers, and intrastate bus services [49 U.S.C. 13101(a)(2)(B), (C), (E), and (G)]. An exemption will also promote fair and expeditious decisions and, by permitting more efficient and economical operations, will improve and maintain a sound, safe, and competitive privately owned motor carrier system [49 U.S.C. 13101(a)(2)(B) and (I)].

Finally, detailed scrutiny under 49 U.S.C. 14303 is not necessary for consistency with the intrastate aspects of the transportation policy contained in 49 U.S.C. 13101(a)(3).

Based on the above considerations and the absence of any opposition, we find that regulation of the proposed transaction is not necessary to carry out the goals of the transportation policy of 49 U.S.C. 13101.

Abuse of Market Power. Nor is regulation necessary to protect passengers or shippers from the abuse of market power. The petition for exemption is unopposed, and, because petitioners are exchanging routes, each will continue to operate the routes formerly operated by the other. Further, petitioners state that the proposed transaction will allow NWL to offer more frequent and reliable local service. Therefore, the proposed transaction should not result in a reduced level of service or a diminished level of competition within the intercity bus industry.

There appears to be ample intermodal competition in the affected region, as well. The private automobile appears to offer pervasive and effective competition for passenger traffic, and other package delivery services offer the same with respect to package express. Strong competition from other transportation modes has been recognized as preventing competitive abuses in the intercity bus industry. See GLI Acquisition Company--Purchase--Trailways Lines, Inc., 4 I.C.C.2d 591 (1988), aff'd mem. sub nom. Peter Pan Bus Lines, Inc. v. ICC, 873 F.2d 408 (D.C. Cir. 1989).

Accordingly, we find nothing of record to suggest that the proposed exchange of routes will in any way lead to an abuse of market power. To the contrary, the transaction may be the best way to ensure continued, vibrant bus service over the affected local routes. Cf. Capitol Bus Company--Pooling--Greyhound Lines, Inc., No. MC-F-20783 (STB served May 20, 1996).[7]

Public Interest. Exempting the proposed transaction from regulation is consistent with the public interest. Subjecting the proposed transaction to detailed regulatory scrutiny would serve no meaningful public policy or regulatory purpose but would be wasteful both of our resources and those of petitioners and the public. On the other hand, an exemption will have multiple beneficial impacts, relating to adequate transportation services and efficient and economic operations, and will not give rise to market abuse or problems that might warrant regulatory scrutiny. In addition, an exemption will insulate petitioners from burdensome state and municipal regulations applicable to intrastate operating rights and leave them with greater resources to support existing and future transportation services. Accordingly, we will grant the requested exemption.

Consistent with petitioners' request for expedition, and in the absence of any opposition to the transaction, we will make the exemption effective on the service date of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 13541, the purchase by NWL and GLI of certain operating rights held by the other, as described above, is exempted from the prior approval requirements of 49 U.S.C. 14303(a)(2).

2. This exemption will be effective on December 13, 1996.

3. A copy of this decision will be served on both the Federal Highway Administration, Office of Motor Carrier Information Analysis, and the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

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[7] Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Vernon A. Williams
Secretary